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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 754

THE EMERY TRANSPORTATION COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

STATEMENT AS TO JURISDICTION

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil Action No. 2164

THE EMERY TRANSPORTATION COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant,

and

INTERSTATE COMMERCE COMMISSION,
Intervening Defendant

JURISDICTIONAL STATEMENT UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

The Emery Transportation Company presents the following statement as the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final decree of February 14, 1950, in the above-entitled cause sought to be reviewed.

A. Statutory Provisions

The statutory provisions believed to sustain the jurisdiction of the Supreme Court are:

U. S. Code, Title 49, Section 17(9); U. S. Code, Title 28, Sections 41(28), 44, 45, 46, 47, 47(a), and 845.

B. Date of the Decree Sought to Be Reviewed and the date upon Which the Application for Appeal Was Presented.

The decree sought to be reviewed was entered February 14, 1950. The petition for appeal, together with the assignment of errors, was presented and allowed March 8th, 1950.

C. Nature of the Cause and of the Rulings Below

This is an appeal from the District Court of the United States for the Southern District of Ohio, Western Division, dated February 14, 1950, dismissing the petition of the plaintiff in which said petition it was prayed that the District Court annul, set aside and enjoin enforcement of an order of the Interstate Commerce Commission dated March 14, 1949, as described in and made a part of the complaint to the District Court.

This action arose as a result of the Commission's suspending, pursuant to the provisions of Title 49, Section 318, of the United States Code, a schedule of minimum rates and charges filed by plaintiff designated as Supplement No. 1 to its MF-I. C. C. No. 97 to become effective on March 29, 1948, a copy of which was attached to the complaint filed with the District Court. A public hearing was held pursuant to an order of the Commission and thereafter a hearing examiner rendered a report and recommended order to the effect that plaintiff was proposing to establish new reduced contract carrier minimum rates which would result in tacking two separately authorized contract carrier rights, thereby attempting to render through transportation service under so-called proportional minimum rates for such through service and that such proposal was unlawful. The

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hearing examiner recommended that plaintiff be required to cancel the aforementioned schedule. A copy of the report and recommended order of the examiner was attached to the complaint.

Exceptions were taken to the recommended report of the examiner, and Division 2 of the Commission, in a report and order dated March 14, 1949, found the proposed schedules unlawful in that they contained new or reduced charges for transportation which was without the scope of plaintiff's operating rights. A copy of the report and order of Division 2 was attached to the complaint.

Plaintiff filed a petition for reconsideration which was denied by the Commission by order dated July 6, 1949. A copy of such denial order was attached to the complaint.

D. Cases Sustaining the Supreme Court's Jurisdiction on Appeal

Rochester Telephone Corp. v. *United States,* 307 U. S. 125;

Cornell Steamboat v. *United States,* 321 U. S. 634;

Schenley Distillers Corporation v. *United States,* 5 F. Supp. 491 (1943).

E. Decree of the District Court

The United States District Court for the Southern District of Ohio, Western Division, by a decree signed by United States Circuit Judge Florence E. Allen, and United States District Judges Nell G. Underwood and John H. Druffel, determined that the action of the Interstate Commerce Commission was reviewable by statutory court but that the order of the Commission requiring plaintiff to cancel the proposed schedule of rates and charges is a

legal and valid order that, therefore, the injunction sought should be denied and the suit dismissed.

Plaintiff, therefore, respectfully submits that the Supreme Court of the United States has jurisdiction of the appeal.

Dated March 8, 1950.

CLARENCE D. TODD,
DALE C. DILLON,
HARRY KASFIR,
Counsel for Appellant.

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